

MINUTES OF MEETING

A meeting of the Chiropractic Physicians' Board of Nevada was held on Friday, June 10, 2005 in Conference Room B111 of Kietzke Plaza, 4600 Kietzke Lane, Reno, Nevada 89502.

The following Board members were present at the roll call:

Margaret Colucci, DC, Vice President
Donald H. Miner, DC, Secretary
Curtis Potts, DC, Member
Ian Yamane, DC, Member
Stephanie Youngblood, DC, President

Consumer Member Bobby Lazenby was not present. Also present were Senior Deputy Attorney General Robert L. Auer and Deputy Attorney General George Campbell.

AGENDA ITEM 1 At 9:31 AM Dr. Youngblood determined that a quorum was present and called the meeting to order.

AGENDA ITEM 2 Dr. Miner led the Pledge of Allegiance.

AGENDA ITEM 3 Dr. Miner moved for approval of the agenda. Dr. Yamane seconded and the motion passed unanimously.

AGENDA ITEM 4 Dr. Miner made a motion to grant licenses to those who passed the May 11, 2005 examination as listed:

Daniel P. Bumgarner, DC
Angela N. Cherniawski, DC
Jim Chung, DC
Susan L. Cunningham, DC
Travis R. Cunningham, DC
Robert DeMartino, DC
Gerald L. Edwards, DC

Daniel C. Lai, DC
Robert L. McClure, DC
Tony McCormick, DC
Nathan D. Noakes, DC
Allen Su, DC
Ramin Vaezi, DC

Dr. Potts seconded the motion and it passed unanimously.

AGENDA ITEM 5 Dr. Miner moved to grant a CA certificate to Kim-Li Prasad who passed the February 25, 2005 examinations. Dr. Yamane seconded and the motion passed unanimously.

AGENDA ITEM 6 Dr. Yamani moved for approval of the April 22-23, 2005 meeting minutes as drafted. Dr. Miner seconded and the motion passed unanimously.

AGENDA ITEM 7 Dr. Miner moved to extend the existing contract with Crown, Stanley and Silverman indefinitely on a month-to-month basis at a \$60 hourly rate. Dr. Colucci seconded the motion and it passed unanimously.

AGENDA ITEM 15 The Executive Director presentation consists of informational reports and there was no action taken.

AGENDA ITEM 8 An administrative hearing pursuant to Complaint No. 04-5 in the matter of Mark Tarantolo, DC, License No. B294, commenced. It was noted that Dr. Tarantolo was present and that he was not represented by counsel. A court reporter was present to record the proceeding. Dr. Youngblood asked Mr. Auer to proceed with his presentation of the prosecution's case in this matter. **Dr. Tarantolo** was sworn in as a witness. Mr. Auer presented the **April 29, 2005 Complaint and Notice of Hearing** in this matter which was admitted as **Prosecution's Exhibit 1**. Dr. Tarantolo admitted to the allegations in the complaint. It was noted that Dr. Tarantolo has completed a drug diversion program and there is no conviction on his record as evidenced by a letter from the office of attorney David D. Spitzer which was admitted as **Respondent's Exhibit 1**. Mr. Auer recommended that the Board establish reasonable terms and conditions for a set time period of probation. The meeting was closed while the board deliberated.

When the meeting reopened Dr. Miner moved that Dr. Tarantolo serve a three year probation to be monitored by the Board's staff during which he will submit to random drug testing at his expense, that Dr. Tarantolo pay a \$500 fine and reimburse the Board for its costs in this matter. Dr. Yamane seconded and the motion passed unanimously.

AGENDA ITEM 9 At 11:00 AM it was noted that Dr. Mark Mattoon was present. A court reporter was present to record the proceeding. Dr. Youngblood asked Mr. Auer to proceed with his presentation of the prosecution's case in this matter. Mr. Auer stated that he had received a request for a continuance from Dr. Mattoon's attorney, James Andre Boles, Esq., however, as verified by CPBN Executive Director Cindy Wade, the request was never formally filed with the CPBN. Mr. Auer read the letter for the record. Dr. Miner moved to not grant the continuance and to proceed with the hearing now. Dr. Colucci seconded the motion. Dr. Mattoon stated that he was advised by his attorney to not comment. He did request that the continuance be granted because he did not receive notice of the hearing. The motion passed with Drs. Colucci, Miner, Yamane and Youngblood in favor; Dr. Potts abstained and inquired as to whether the Respondent received proper notice of this hearing.

Cindy Wade was sworn in and testified with respect to service and receipt of the notices and follow-up communication with the Respondent and his attorney. The following exhibits were admitted:

Exhibit A **May 25, 2004 Complaint and Notice of Hearing in the Matter of Dr. Mark J. Mattoon, DC**

- Exhibit B** Unopened letter from Office of the Attorney General to Dr. Mark J. Mattoon, DC, returned on June 1, 2005 marked "Unclaimed."
- Exhibit C** June 6, 2005 letter from Robert L. Auer to James Andre Boles, Esq.
- Exhibit D** Certified Mail return receipt addressed to James Andre Boles, Esq., signed for by Ursula Paredes on May 13, 2005

Mr. Auer requested a formal vote from the board with respect to a continuance. Dr. Potts moved to deny a continuance in this matter. Dr. Yamane seconded. The motion passed unanimously with all in favor and no one opposed.

The administrative hearing pursuant to Complaint 01-09 in the matter of Mark J. Mattoon, DC, License No. B262 commenced. The following witnesses for the prosecution were sworn in and testified in this matter: **Mark J. Mattoon, DC, Dr. John Q. Adams, and Bill J. Bailey, DC.** The following prosecution's exhibits were admitted:

- Exhibit 1** Patient records of Elsie Adams
- Exhibit 2** May 16, 2000 letter from CPBN Executive Director Cindy Wade to Mark J. Mattoon, DC
- Exhibit 3** Three photocopies of label on bottle of DMSO
- Exhibit 4** April 24, 2001 letter from Keith W. Macdonald, Executive Secretary, Nevada State Board of Pharmacy, to Cindy Wade

There was a lunch break at 1:30 PM, during which the following was addressed:

AGENDA ITEM 15 Legislative Lobbyist Susan Fisher reported on the results of the 2005 Legislative Session.

At 2:15 PM it was determined that all members of the board were present except Consumer Member Bobby Lazenby and the Mattoon hearing resumed. **Cindy Wade and Gina Crown** testified for the prosecution and the following prosecution's exhibits were admitted:

- Exhibit 5** August 9, 2004 Application for Certification of Chiropractor's Assistant of Shayni Farcello
- Exhibit 6** July 2, 2002 list of employees from Carson Valley Chiropractic

There was no defense presentation. Dr. Mattoon stated that his attorney, Mr. Boles, will protest today's proceedings. There were no closing arguments. Dr. Miner recused himself as the investigating board member.

Dr. Yamane moved to find Dr. Mattoon **guilty** of unprofessional conduct as defined in NRS 634.018(5) for dispensing the substance DMSO to Elsie Adams. Dr. Potts seconded and the motion passed unanimously.

Dr. Yamane moved to find Dr. Mattoon **guilty** of unprofessional conduct as defined in NRS 634.018(5),

NRS 634.018(10) and NAC 634.430(1)(h) for failing to provide complete self-inspection forms for the years 2000 and 2001. Dr. Yamane restated his motion to find Dr. Mattoon guilty for submitting an incomplete self-inspection form for 2000 and failing to submit a self-inspection form for 2001. Dr. Colucci seconded and the motion passed unanimously.

Dr. Potts moved that Dr. Mattoon be found **guilty** of unprofessional conduct as defined in NRS 634.018(15) and NRS 634.018(11), including acts found in NAC 634.415 and/or NAC 634.430(n) for permitting the following unlicensed persons: Brian Mattoon, Caron Mason and Shawna Conlan to perform patient services. Dr. Yamane seconded and the motion passed unanimously. Dr. Potts restated his motion to find Dr. Mattoon guilty of permitting unlicensed persons to perform patient services as alleged in Paragraph 9 of the Complaint and Notice of Hearing with the exclusion of Jennifer Lee and Monique Granada. Dr. Yamane seconded and the motion passed unanimously.

Dr. Youngblood moved to find Dr. Mattoon **guilty** of unprofessional conduct under NRS 634.018(15) for failing to timely register a chiropractor's assistant as required under NAC 634.360. Dr. Yamane seconded and the motion passed unanimously.

Dr. Potts moved to postpone the penalty phase until a later date. The motion died for lack of a second. Dr. Youngblood moved to proceed with the penalty phase. Dr. Colucci seconded and the motion passed with Drs. Colucci, Yamane and Youngblood in favor and Dr. Potts opposed.

Mr. Campbell described the penalties that may be imposed under NRS 634.190. Dr. Potts moved to reopen the hearing. Dr. Yamane seconded the motion which did not pass due to a tie with Drs. Potts and Yamane in favor and Drs. Colucci and Youngblood opposed.

Dr. Potts moved that Dr. Mattoon be placed on a period of probation for three years to begin on the day the order is served. Dr. Youngblood seconded and the motion passed unanimously.

Dr. Colucci moved that a fine be imposed in the amount of \$3,000 for the DMSO violation, plus \$1,000 for each of the three other violations, a total of \$6,000, to be paid by December 31, 2005. Dr. Youngblood seconded and the motion passed unanimously.

Dr. Youngblood moved that Dr. Mattoon be required to reimburse the board for all of its costs in this matter, including attorney and investigative fees and hearing costs. Dr. Colucci seconded the motion and it passed unanimously. Dr. Yamane moved that the costs be paid within 120 days. Dr. Youngblood seconded and the motion passed unanimously.

Dr. Youngblood moved that Dr. Mattoon be required to attend a 12 hour seminar on the subject of risk management in addition to the 12 hours required for his license renewal. Dr. Potts seconded and the motion passed unanimously. Dr. Yamane moved that this seminar must be attended by the end of the year. Dr. Youngblood seconded and the motion passed unanimously.

Dr. Yamane moved that Dr. Mattoon be required to sit for and pass the board's jurisprudence test by December 31, 2005. Dr. Youngblood seconded the motion and it passed unanimously.

Dr. Colucci moved that Dr. Mattoon be required to hire a compliance officer to monitor his practice for one year. Dr. Youngblood seconded and the motion passed unanimously. The motion was amended to

require Dr. Mattoon to pay for the cost of hiring the compliance officer and that quarterly reports to the board shall be submitted. The amended motion passed unanimously.

Dr. Youngblood moved that Dr. Mattoon submit the name of a person to monitor his practice within 30 days for approval.

Dr. Youngblood directed Mr. Auer to prepare an order of the board in this matter to be served on Dr. Mattoon.

AGENDA ITEM 10 Dr. Miner moved to deny a request from Injury Network Referral Bureau to provide services for Nevada chiropractors under NAC 634.440 as of this date, that a cease and desist notice be issued to remain in effect until the board meets on July 22, 2005 at which time Ms. Ann Gelvin will be invited to attend and this matter will be reconsidered. A copy of the cease and desist letter will be sent to the licensees who are currently contracted with Injury Network Referral Bureau. Dr. Yamane seconded and the motion passed unanimously.

AGENDA ITEM 11A Dr. Yamane moved for approval of the proposed format and procedure for expedited settlement agreements. Dr. Youngblood seconded and the motion passed unanimously.

AGENDA ITEM 11B Dr. Yamane moved that outside attorneys be interviewed by the board for initial work as the board's general counsel and for possible future consideration for prosecutor. Dr. Youngblood seconded the motion and it passed unanimously.

AGENDA ITEM 12 Dr. Miner made a motion to eliminate use of the application for on-the-job training for Chiropractor's Assistants. Dr. Yamane seconded and the motion passed unanimously.

AGENDA ITEM 13A Dr. Yamane moved to approve for permanent regulations the temporary regulations that were adopted October 12, 2004. Dr. Colucci seconded and the motion passed unanimously.

AGENDA ITEM 13B(1) Dr. Potts moved to approve the addition of the proposed subsection 1(r) to NRS 634.430 as amended. Dr. Yamane seconded and the motion passed unanimously.

AGENDA ITEM 13B(2) Dr. Yamane moved to revise the regulations to increase the fee for approval of continuing education seminars to \$25. Dr. Youngblood seconded and the motion passed unanimously.

AGENDA ITEM 13B(3) Dr. Youngblood moved to revise the regulations to include a provision for simplified registration of independent contractors. Dr. Yamane seconded and the motion passed unanimously.

AGENDA ITEM 13B(4) Dr. Yamane moved for approval of revising the regulations to include a provision for a preceptor/postceptor program in the form of the Wisconsin program. Dr. Colucci seconded the motion and it passed unanimously.

AGENDA ITEM 13B(5) The CE criteria was discussed and will be addressed again at the next meeting.

AGENDA ITEM 14A Dr. Miner moved for approval of the proposed 2004/05 budget augmentations. Dr. Youngblood seconded and the motion passed unanimously.

AGENDA ITEM 14B Dr. Miner moved to approve the 2005/06 budget as proposed. The motion was seconded by Dr. Youngblood and passed unanimously.

AGENDA ITEMS 16, 17, 18 and 19 The Executive Director's reports are informational only and no action was taken.

AGENDA ITEM 20 Dr. Youngblood distributed a portion of the current applications for continuing education seminar approval to each board member. She requested that they review and approve the seminars and return them to Cindy Wade.

AGENDA ITEM 21 Under the Correspondence Report, Dr. Youngblood will respond to a letter received from the Board of Oriental Medicine regarding the practice of acupuncture by our licensees.

The board instructed Cindy to respond to an inquiry from John Fresh, DC, that he may use the name "Dr. Posture" in his advertising as long as it is in conjunction with his own name.

Cindy requested that board members take note that the court reporter at a previous meeting had difficulty recording some of the board's discussion because more than one person was talking at the same time.

Cindy described the background of her correspondence with Drs. Donald Lambert and Rebecca Gould with reference to their activities at Burning Man and Dr. Lambert's \$250 reimbursement to the board for its investigative costs in this matter.

AGENDA ITEM 22 Dr. Youngblood expressed the board's concern that its Consumer Member has not attended the past several meetings. She will contact the Governor's office for their advice.

Dr. Youngblood stated that she will look into the possibility of issuing a press release to announce the board's success in getting its legislative bill passed this session.

AGENDA ITEM 23 There was no public comment and the meeting adjourned.

APPROVED: July 22, 2005

Donald H. Miner, DC, Secretary